

LATE FILED



BellSouth Telecommunications, Inc
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

joelle.phillips@bellsouth.com

OCT 18 PM 3 49
October 18, 2004

Joelle J. Phillips
Attorney

615 214 6311
Fax 615 214 7406

3 TN REGULATORY AUTHORITY
BUCKET ROOM

VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition for Exemption of Certain Services*
Docket No 03-00391

Dear Chairman Miller:

Enclosed are the original and fourteen copies of the Rebuttal Testimony of Kathy Blake on behalf of BellSouth. The exhibits to Ms. Blake's testimony are proprietary and are being filed under separate cover pursuant to the terms and conditions of the Protective Order entered in this matter. Copies of the enclosed are being provided to counsel of record.

Cordially,

A large, stylized handwritten signature in black ink, appearing to read "Joelle Phillips".

Joelle Phillips

JJP:ch

1 BELLSOUTH TELECOMMUNICATIONS, INC.
2 REBUTTAL TESTIMONY OF KATHY K. BLAKE
3 BEFORE THE TENNESSEE REGULATORY AUTHORITY
4 DOCKET NO. 03-00391
5 OCTOBER 18, 2004
6

7 Q. PLEASE STATE YOUR NAME, YOUR POSITION WITH BELLSOUTH
8 TELECOMMUNICATIONS, INC. ("BELLSOUTH") AND YOUR BUSINESS
9 ADDRESS.

10
11 A My name is Kathy K. Blake. I am employed by BellSouth as Director –
12 Policy Implementation for the nine-state BellSouth region. My business
13 address is 675 West Peachtree Street, Atlanta, Georgia 30375.

14
15 Q HAVE YOU PREVIOUSLY FILED TESTIMONY IN THIS PROCEEDING?
16

17 A Yes. I filed direct testimony on October 4, 2004.
18

19 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?
20

21 A. The purpose of my testimony is to provide BellSouth's rebuttal to the direct
22 testimony filed by witnesses Terry Buckner and Dr. Steve Brown on behalf
23 of the Consumer Advocate and Protection Division ("CAD") and Mark
24 Argenbright on behalf of AT&T Communications of the South Central
25 States, LLC ("AT&T").

1

2 Q WHAT APPEARS TO BE THE MAIN THEME OF THE TESTIMONIES OF
3 AT&T AND THE CAD?

4

5 A. The main theme appears to be that the price of PRI should not be
6 deregulated because it is a "critical input for the implementation of VoIP
7 [Voice over Internet Protocol] service." (Argenbright, p. 11) Mr.
8 Argenbright (at p. 3) claims that exemption of PRI from regulation would
9 allow BellSouth, as an "unregulated dominant provider," to hamper the
10 development of this new technology. Voice calls made via a VoIP
11 application are converted to data packets that are carried over an Internet
12 Protocol ("IP") based network. In order for a VoIP call to be terminated to
13 a customer served by the public switched telephone network ("PSTN"), the
14 call needs to leave the IP based network via a gateway that is connected
15 to the PSTN. Specifically, Mr. Argenbright says that in order for the VoIP
16 call to be accurately converted from data packets (carried over an Internet
17 Protocol ("IP") based network) back to a time division multiplexed ("TDM")
18 or analog signal, the gateway provider must use the call signaling and
19 control features of the PRI circuits. "Without the use of a PRI circuit, VoIP
20 calls could not interface with the public switched telephone network
21 ("PSTN") with any degree of accuracy or quality." (Argenbright, p. 6) (See
22 also, Brown, pages 3-7.)

23

24 Q. IS IT NECESSARY FOR PRI TO BE USED TO PROVIDE VOIP
25 SERVICE?

1

2 A. No. It is not necessary to use PRI to convert signals from voice to data
3 packets, or from data packets back to TDM or analog. AT&T's claim is
4 apparently premised on its use of PRI circuits to connect to the PSTN. In
5 actuality, more accurate call information is passed using SS7-based
6 trunks where signaling is at a peer level between networks. PRI was
7 originally built for PBX interface (not a peer relation at all) and has been
8 widely used by other carriers to connect to the PSTN because it is less
9 expensive and readily available. PRI is an alternative, but has limited
10 capacity compared to SS7 signaling. SS7 signaling to a signaling
11 gateway is preferred.

12

13 Q. ON PAGES 6-7, MR. BUCKNER CLAIMS THAT MOST CLECS WHO
14 COMPETE WITH BELL SOUTH'S PRI SERVICE MUST PURCHASE
15 WHOLESALE (UNE) SERVICES FROM BELL SOUTH TO DO SO. HE
16 FURTHER STATES THAT "EFFECTIVE PRICE COMPETITION IS NOT
17 LIKELY TO OCCUR AS THE CLEC'S COSTS OF PRI ISDN ARE
18 LARGELY DRIVEN BY BELL SOUTH'S WHOLESALE PRICES." ARE
19 THESE STATEMENTS CORRECT?

20

21 A. No. A CLEC may buy wholesale (UNE) services from BellSouth to
22 provide a competitive PRI service, but wholesale rates are not an issue in
23 this proceeding. This proceeding only deals with pricing flexibility for
24 BellSouth's, UTSE's, and Citizens' retail PRI service. Wholesale rates are
25 provided in Interconnection Agreements ("ICAs"), not by tariff

1

2 Q DO VOIP PROVIDERS PURCHASE BELLSOUTH'S PRI SERVICE
3 PURSUANT TO INTERCONNECTION AGREEMENTS ("ICAs")?

4

5 A. Not usually. Perhaps VoIP providers have not entered into ICAs with
6 ILECs because they do not want VoIP services to be subjected to
7 jurisdiction by the Authority. Some providers may use a combination of
8 various agreements, thereby obviating the need for an ICA with an ILEC.
9 For example, Vonage may contract with XO to obtain services which XO
10 has obtained pursuant to an ICA with BellSouth. To the extent a VoIP
11 provider purchases BellSouth's retail service, or purchases PRI from a
12 CLEC which, in turn, purchases wholesale PRI from BellSouth, such
13 purchases are not governed by Section 251. Other retail PRI customers
14 should not have to be precluded from the benefits of lower prices so that
15 VoIP providers can benefit by tariff shopping.

16

17 Q. DO TESTIMONIES BY THE CAD AND AT&T PUT FORTH THE PROPER
18 STANDARDS FOR THE TRA TO USE IN MAKING A DETERMINATION
19 ON PRI PRICING FLEXIBILITY?

20

21 A. No. To the contrary, the CAD and AT&T witnesses have stated that an
22 ILEC must prove it is no longer the dominant provider of PRI, they have
23 argued that continued regulation of an old service is necessary to support
24 the new VoIP technology, and they have used the threat of predatory
25 pricing as reasons for denying BellSouth's request. Through all of these

1 arguments, the CAD and AT&T are encouraging the TRA to use the wrong
2 standards in making a decision in this proceeding.

3

4 Q. ON PAGE 6, MR. BUCKNER CLAIMS THAT, WITHOUT A
5 DETERMINATION OF MARKET SHARE INFORMATION, THE TRA
6 SHOULD TAKE NO ACTION TO EXEMPT PRI FROM REGULATION.
7 LIKEWISE, DR. BROWN STATES, AS PART OF HIS DOMINANT FIRM
8 THEORY (PAGES 9-10), THAT THE TRA MUST HAVE "RELIABLE
9 DATA SHOWING EACH PROVIDER'S SHARE OF THE MARKET FOR
10 EACH MONTH OF THE PAST 24 MONTHS" TO MAKE A DECISION IN
11 THIS PROCEEDING. MR. ARGENBRIGHT MAKES THE SAME
12 ARGUMENT ON HIS PAGES 3-5. DO YOU AGREE?

13

14 A. No. The statutory criteria by which a service may be exempted from
15 regulation does not require any threshold market share level or a finding of
16 non-dominance Tenn. Code Ann § 65-5-208(b) states: "The [A]uthority
17 shall in any event exempt a telecommunications service for which existing
18 and potential competition is an effective regulator of the price of those
19 services." Similarly, in BellSouth's 271 cases, dominance was not the
20 standard for relief and the local telecommunications market in Tennessee
21 was deemed to be irreversibly open to competition.

22

23 Q. ON PAGE 11, DR. BROWN CITES BELLSOUTH'S COMMENTS IN A
24 CASE BEFORE THE FCC AS ACKNOWLEDGING THE VALIDITY OF
25 THE "DOMINANT FIRM" MODEL. PLEASE RESPOND

1

2 A The case which Dr. Brown cites is the FCC Cable Services Bureau Docket
3 00-30, addressing the merger of AOL and Time Warner. Use of the
4 "Dominant Firm" model in that case – a merger situation – is not
5 analogous to the present case. When the FCC evaluates the effect of
6 proposed mergers, it is not performing the same type of task as is the TRA
7 in an exemption case. A merger necessarily results in fewer (because two
8 are combined) participants in a market. In contrast, exemption petitions
9 under Tennessee law require the Authority to evaluate whether current
10 and future competition are sufficient to regulate price. There is no specific
11 reference in the Tennessee statute to any particular "market dominance"
12 test

13

14 Q ON PAGES 8-12 OF HIS TESTIMONY, DR. BROWN SAYS, "WITH
15 REGARD TO PRI SERVICES, THE DOMINANT FIRM MODEL SAYS
16 THAT A FIRM RAISES PRI PRICES BECAUSE RIVAL FIRMS DO NOT
17 HAVE THE CAPACITY TO ACCOMMODATE CUSTOMERS WHO WANT
18 TO SWITCH PRI PROVIDERS." IS THIS A VALID PREMISE?

19

20 A. It may be a valid premise in theory, but it is not applicable to the instant
21 case. In contrast to Dr. Brown's theory, the facts in this case – even those
22 facts relied on by Dr. Brown and Mr. Buckner, show that BellSouth's
23 competitors are currently competing by offering lower prices compared to
24 BellSouth. There is no reason to believe that BellSouth plans to raise its
25 prices to drive competitors out of business or that such a decision would

1 not result in BellSouth losing customers to those CLECs. To the contrary,
2 BellSouth has lowered its prices (through CSAs and promotions) in an
3 attempt to meet its competition.

4
5 Q. HOW DOES MR. BUCKNER ESTIMATE MARKET SHARE?

6
7 A. On page 6, Mr. Buckner first states, "it is impossible to determine the
8 market share of PRI ISDN access lines by a single telecommunications
9 provider." Then, he provides the number of BellSouth PRI access lines in
10 Tennessee (Schedule 7) and BellSouth's total access lines (switched
11 access and special access) (Schedule 8) to demonstrate that "BellSouth
12 remains the dominant facilities-based provider." All he has done is
13 provide the volume of BellSouth's PRI service – he has done nothing to
14 estimate market share or to prove that BellSouth is the dominant provider.
15 Stated simply, Mr. Buckner's testimony shows nothing more than his
16 estimate of BellSouth's "piece" of the pie. To show market power, the size
17 of the **entire** pie must be shown, and no party in this docket has professed
18 to have knowledge as to the size of the entire pie.

19
20 Further, even if Mr. Buckner or BellSouth could determine BellSouth's
21 relative share of the wireline PRI market, that estimate would not tell the
22 whole story. Due to the increase in intermodal competition from non-
23 wireline providers (cable, wireless and VoIP), neither BellSouth nor the
24 CAD nor AT&T can determine market share for the total PRI market.

25

1 Q. IN THEIR ARGUMENTS THAT THE TRA MUST CONTINUE ITS
2 REGULATION OF PRI IN ORDER TO SUPPORT VOIP, ARE THE CAD
3 AND AT&T USING A PROPER STANDARD?
4

5 A No. As a threshold matter, it is illogical to argue that continued "old-style"
6 regulation of an "old" service (PRI) is necessary to support a new advance
7 technology such as VoIP. The development of VoIP has been a
8 significant technological step in telecommunications. Many commentators
9 have observed the importance of "light touch" regulation for new
10 technologies to foster continued innovation. In contrast, AT&T and the
11 CAD appear to be taking the illogical position that new technologies
12 require more regulation on older, existing services. Particularly in light of
13 the lack of regulation on cable competitors, this approach is bad policy,
14 which would likely reduce innovation.
15

16 AT&T argues that CLECs are dependent on purchasing PRI from ILECs
17 As I discussed earlier, a VoIP provider does not have to purchase PRI
18 service to provide its VoIP service. Although AT&T is advertising its
19 CallVantage VoIP service in Tennessee, according to BellSouth's records,
20 AT&T is not purchasing BellSouth's UNE PRI combination product or
21 BellSouth's stand alone DS1 loops to provide AT&T's PRI service, nor are
22 they reselling BellSouth's PRI service.
23

24 Q. DR. BROWN STATES ON P. 6 THAT "DEREGULATING PRI WOULD
25 ALLOW BELL SOUTH, UTSE AND CITIZENS TO PRICE DISCRIMINATE

1 AMONG PRI CUSTOMERS ACCORDING TO HOW THE SERVICE IS
2 USED,” CLAIMING THAT ILECS WOULD CHARGE INFLATED PRICES
3 TO PRI CUSTOMERS WHO OFFER VoIP, AND VERY LOW PRICES TO
4 PRI CUSTOMERS WHO DO NOT OFFER VoIP. PLEASE RESPOND.

5
6 A. Dr. Brown’s warning of discriminatory pricing has no basis. BellSouth
7 cannot tell what PRI customers are using the service for, and neither can
8 he. Further, even if BellSouth could identify the customer’s use of the
9 service, BellSouth has no intention of pricing its service differently to
10 different customers based on that criteria. BellSouth will continue to use
11 promotions and CSAs to offer discounts as needed to meet competitive
12 offers.

13
14 Q. DR. BROWN (P. 5) CLAIMS THAT DECLINING PRICES OF PRI IN CSAs
15 IS “REPRESENTATIVE OF A DOMINANT PROVIDER WHOSE
16 STRATEGY IS TO IMPROVE MARKET SHARE BY REDUCING
17 PRICES.” SIMILARLY, MR. BUCKNER (P. 5) CLAIMS THAT
18 BELL SOUTH’S CSA DISCOUNTS REPRESENT ANTI-COMPETITIVE
19 BEHAVIOR THAT “COULD LEAD TO PRICE-SQUEEZING AND
20 PREDATORY PRICING IN THE FUTURE.” PLEASE RESPOND.

21
22 A. First, I am providing a new version of the data in Mr. Buckner’s Schedule
23 1, a summary of tariff prices by CLECs in competition with BellSouth. My
24 Rebuttal Exhibit KKB-1 is a graph using Mr. Buckner’s totals, sorted by

1 price, to demonstrate that all 14 competitors on his Schedule 1 are
2 currently pricing their PRI services below BellSouth's tariffed price.

3
4 Second, to make his point related to CSA discounts, Mr Buckner provides
5 his Schedule 4 (Proprietary) which lists the tariff rates, CSA rates and
6 service costs for approximately 600 CSAs. There are several problems
7 with Mr. Buckner's data, as follows:

8
9 (1) The tariff rates shown in his exhibits are in several instances
10 inaccurate. The tariff reflects three term plans, 12-23 months, 24-
11 48 months and 49-72 months. Tariff rates decrease with increasing
12 term. Mr Buckner's exhibit reflects the incorrect rates for the
13 stated CSA term. This problem is most evident in the column for B-
14 Channel tariff rates. The same number is reflected for each CSA
15 regardless of term length. A quick check of the data on pages 12,
16 13 and 14 of Schedule 4 shows 11, 15 and 11 errors respectively.
17 Given that each page includes 27 CSAs, that is an average error
18 rate of 15% (three tariff rates per CSA) or errors on 45% of the
19 CSAs listed

20
21 (2) Schedule 4 does not list the discounts calculated and displayed in
22 Schedule 5 (graph displaying the trend in BellSouth's CSA PRI
23 ISDN service prices for Tennessee listed in Schedule 4) However,
24 given the problem with incorrect tariff rates in Schedule 4, it
25 appears that many of the discounts shown are incorrect, and Mr.

1 Buckner's statement that discounts range from 5.1% to 72.99%
2 (page 5) is questionable.

3

4 (3) Perhaps most significantly, this reliance on CSA discounts as a
5 demonstration of market power is illogical. A provider dominating
6 the market would not need to lower prices. The testimony in this
7 docket – and the record comprised of years of filings at the TRA –
8 show that BellSouth has discounted its PRI to compete with carriers
9 who offer lower prices. The suggestion throughout the testimony is
10 that CSAs show some problem or negative aspect of the market.
11 The TRA has repeatedly noted, however, that the use of CSAs is a
12 sign of competition. Moreover, both the TRA and the General
13 Assembly have determined that CSAs are non-discriminatory

14

15 Q MR. BUCKNER ALLEGES THAT THE TWO CSAs IN HIS SCHEDULE 6
16 ARE DISCOUNTED BELOW COST. IS HE CORRECT?

17

18 A. No. The costs shown by Mr. Buckner are inaccurate for CSAs filed since
19 2003. Cost support for PRI service was initially filed on September 23,
20 1996 with the tariff for this service. Updated cost information (reflecting
21 lower costs) was filed with a tariff introducing a new term option. This tariff
22 was filed with the Authority on November 22, 2002 and became effective
23 on December 23, 2002. The updated cost information is not reflected in
24 Mr. Buckner's schedule. This new cost support information applies to any
25 CSAs filed after December 22, 2002. Attached as Rebuttal Exhibit KKB-2

1 are the revenue, cost and contribution calculations for these two CSAs
2 using the correct costs. These calculations show that costs are only 55%
3 to 61% of the contract revenue.

4
5 Q PLEASE EXPLAIN MORE FULLY WHY BELL SOUTH NEEDS GREATER
6 PRICING FLEXIBILITY FOR PRI THAN IT CURRENTLY HAS.

7
8 A The proposed pricing flexibility that BellSouth is requesting is consistent
9 with the realities of the marketplace that have prompted BellSouth to
10 request regulatory exemption for PRI service. As competition flourishes,
11 market participants must find ways to reduce regulatory process, improve
12 efficiency, and introduce changes in the marketplace more quickly. Such
13 improvements as here proposed will benefit Tennessee
14 telecommunications customers as well as BellSouth, UTSE and Citizens.
15 Moreover, the statute does not instruct the TRA to exempt services only
16 when carriers would "need" such exemption. Instead, the General
17 Assembly has established a method by which the TRA is to look at
18 services and exempt where competition is sufficient to regulate price. The
19 robust price competition for PRI is evident and warrants exemption

20
21 Q. IF BELL SOUTH'S REQUEST FOR PRI EXEMPTION IS GRANTED, WILL
22 THAT OBVIATE THE NEED FOR CSAs?

23
24 A. No. Even if BellSouth is granted the pricing flexibility requested in this
25 proceeding, we will still offer CSAs with discounts off the standard price

1 list for customers who qualify for volume & term discounts, or to otherwise
2 meet competition. CSAs are a recognized, important toll in Tennessee's
3 competitive market. Both the TRA and the General Assembly have
4 recognized the importance of negotiated pricing for specific business
5 customers. Nothing in either the exemption statute nor the statute
6 addressing negotiated prices (CSAs) suggests that the two are mutually
7 exclusive.

8

9 Q MR. BUCKNER (P. 9) SAYS THAT PRI EXEMPTION WOULD NOT BE IN
10 THE PUBLIC INTEREST BECAUSE "MOST OF THE CLECS
11 OPERATING IN TENNESSEE IN 2003 WERE NOT PROFITABLE,"
12 THEREFORE, PROSPECTIVE COMPETITION IS LIKELY TO BE
13 NEGLIGIBLE. PLEASE RESPOND.

14

15 A. Mr. Buckner's testimony addresses only general CLEC profitability, not the
16 profitability of PRI. His comments imply that ILECs should keep their tariff
17 prices high so that CLECs can keep their prices high and be profitable but
18 still compete against BellSouth.

19

20 Q IS IT APPROPRIATE FOR APPROVAL OF BELL SOUTH'S REQUEST
21 FOR PRI EXEMPTION TO BE DETERMINED BY THE LEVEL OF
22 PROFITABILITY OF CLECS, EITHER IN GENERAL, OR SPECIFICALLY
23 IN THEIR ABILITY TO OFFER PRI SERVICE IN TENNESSEE?

24

1 A. No. Again, nothing in the Tennessee statute establishes "CLEC
2 profitability" as a threshold issue for exemption. The activity in
3 Tennessee's market – in which CLECs have consistently been offering
4 PRI at prices below BellSouth's prices – speaks for itself and
5 demonstrates that competition is sufficient to regulate price. Moreover,
6 PRI is a business service, and it is well-recognized that the business
7 sector of the telecommunications market has long been the area on which
8 CLECs have focused – no doubt due to profitability.

9
10 Q. MR. BUCKNER ALSO MAKES THE ARGUMENT THAT "CLECs HAVE
11 MINUSCULE FACILITIES RELATIVE TO BELL SOUTH" (P. 6) AND THAT
12 NON-FACILITIES BASED CLEC COMPETITION "IS NOT LIKELY TO
13 RESULT IN SUSTAINED HEAD TO HEAD COMPETITION, WHICH IS
14 NECESSARY TO EFFECTIVELY REGULATE THE PRICE OF PRI ISDN
15 SERVICE." (P. 7) SHOULD CLECS' LACK OF FACILITIES BE A
16 REASON TO DENY BELL SOUTH'S REQUEST FOR PRICING
17 FLEXIBILITY?

18
19 A. No. As discussed above, it is not necessary for CLECs to purchase
20 BellSouth's PRI (either as UNEs or as resale) in order to provide their own
21 PRI service in competition with BellSouth. Further, the 1996 Act
22 envisioned CLECs having the option of building their own facilities rather
23 than, or in addition to, purchasing UNEs from BellSouth. As the FCC has
24 stated, the widespread availability of UNEs is intended to be only a

1 “transitional arrangement until fledgling competitors ... develop a customer
2 base and complete the construction of their own networks.”¹

3

4 Most importantly, CLECs’ choices to do business without greater
5 deployment of facilities are simply not a relevant factor under the
6 Tennessee statute.

7

8 Q. PLEASE SUMMARIZE YOUR TESTIMONY.

9

10 A. Contrary to testimony by the CAD and AT&T witnesses, PRI is not a
11 critical input for the implementation of VoIP, the standards they put forth
12 are not proper standards for a determination in this case, there is no
13 indication that granting BellSouth’s request for PRI pricing flexibility would
14 lead to discriminatory pricing, and no threshold of CLEC profitability is
15 necessary to make a decision on BellSouth’s request. Further, the issues
16 in this case relate to retail pricing flexibility for PRI, not wholesale pricing
17 issues. Nothing in their testimony should preclude the TRA from deciding
18 in BellSouth’s favor in this docket.

19

20 Q. DOES THIS CONCLUDE YOUR TESTIMONY?

21

22 A. Yes.

23

24

¹ *UNE Remand Order*, ¶6

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2004, a copy of the foregoing document was served on the parties of record, via the method indicated:

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
414 Union Street, #1600
Nashville, TN 37219-8062
hwalker@boultcummings.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Martha M. Ross-Bain, Esquire
AT&T
1200 Peachtree Street, Suite 8100
Atlanta, Georgia 30309
rossbain@att.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Charles B. Welch, Esquire
Farris, Mathews, et al.
618 Church St., #300
Nashville, TN 37219
cwelch@farrismathews.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Joe Shirley, Esquire
Office of Tennessee Attorney General
P. O. Box 20207
Nashville, TN 37202
Joe.shirley@state.tn.us

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Edward Phillips, Esq.
United Telephone - Southeast
14111 Capitol Blvd.
Wake Forest, NC 27587
Edward.phillips@mail.sprint.com

☐ Hand
☐ Mail
☐ Facsimile
☐ Overnight
☒ Electronic

Guilford Thornton, Esquire
Stokes & Bartholomew
424 Church Street, #2800
Nashville, TN 37219
gthornton@stokesbartholomew.com

